Supreme Court, U.S.
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IN THE

Supreme Court

of the

United States

OCTOBER TERM, 1997

CALVIN L. SHOEMAKER,
Plaintiff-Petitioner,

v.

UNITED STATES, SIX UNKNOWN FEDERAL DOES, UNITED STATES JUSTICE DEPARTMENT, CENTRAL INTELLIGENCE AGENCY, UNITED STATES SECRET SERVICE, DEPARTMENT OF DEFENSE, VETERANS ADMINISTRATION, NATIONAL SECURITY AGENCY; DOES 1-20;
Defendants-Respondants.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit

SUPPLEMENTAL APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

Calvin L. Shoemaker, *Plaintiff, pro se*
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New York, NY 10023
917.912.4868

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APPENDIX

DC: SDNY
DC Docket: 96-cv-1465
DC Judge: SCHEINDLIN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR THE PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the fifth day of February, one thousand nine hundred ninety-eight.

Present: HONORABLE JOSEPH M. McLAUGHLIN,
HONORABLE GUIDO CALABRESI,
Circuit Judges,
HONORABLE RICHARD OWEN,
District Judge.

CALVIN L. SHOEMAKER
Plaintiff-Appellant,

-v- No. 9706073

U.S. DEPARTMENT OF JUSTICE; FEDERAL BUREAU OF INVESTIGATION; DRUG ENFORCEMENT AGENCY; PRESIDENT OF THE UNITED STATES OF AMERICA; VICE PRESIDENT OF THE UNITED STATES; NATIONAL SECURITY AGENCY; SIX UNKNOWN FEDERAL DOES,

Defendants-Appellees.

FOR APPELLANT: Calvin Shoemaker, Pro Se, New York, NY

FOR APPELLEES: Kathleen M. Riedy, Steven M. Haber, Assistant United States Attorneys, New York, NY

[1]

Shoemaker v. U.S. Dep't of Justice, No. 97-6073

Appeal from the United States District Court for the Southern District of New York (Scheindlin, Judge).

This cause came on to be heard on the transcipt of record from the United States District Court for the Southen District of New York and was argued.

ON CONSIDERATION WHEREOF, it is hereby ordered, adjudged, and decreed that the appeal be and t is hereby DISMISSED.

Calvin Shoemaker alleges that the government is spying on him. Specifically, he believes that the government, in league with the major television networks, is reading his mind, searching his computer records, and stealing his bathroom waste. Shoemaker claims that in attempts to embarrass him, the govemnent and the networks have: (1) broadcast information about his feces on national television; and (2) filed and publicized fals charges of child abuse against him.

In February 1996, Shoemaker filed suit in the United States District Court for the Southern District of New York (Scheindlin, J.) alleging that various agencies and officials of the federal government violated: 42 U.S.C. §§ 1983 & 1985; the Tucker Act, 28 U.S.C. § 1346; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961; and various New York State laws, by defaming him and subjecting him to constant

surveillance. Shoemaker sought damages of $850 million and an injunction prohibiting further surveillance.

Shoemaker filed a similar lawsuit one year earlier, which was dismissed as "frivolous and delusional." Shoemaker v. State of California, No. 95 Civ. 2945 (S.D.N.Y. Sept. 12, 1995) (Preska, J.). This court affirmed that dismissal by summary order, noting that Shoemaker's clams were conclusory and frivolous. Shoemaker v. State of California, No. 95-7964 (2d Cir. Mar. 8, 1996).

In the suit before us, Shoemaker amended his complaint twice. In September 1996, Shoemaker asked Judge Scheindlin for leave to amend a third time and for an order compelling discovery. Judge Scheindlin granted leave to amend. She also ordered the government to produce any files that it had on Shoemaker.

In December 1996, the government moved to dismiss Shoemaker's third amended complaint pursuant to Fed. R. Civ. P. 12 (b)(1), (5), & (6). The government argued that that: (1) the allegations in the complaint were so insubstantial that the district court lacked subject matter jurisdiction; (2) the claims against the United States were barred by sovereign immunity; (3) Shoemaker had failed to serve the defendants; (4) the complaint failed to state a claim upon which relief could be granted; and (5) the claims were barred by res judicata.

On March 5, 1997, Judge Scheindlin granted the motion to dismiss, essentially for the reasons advanced by the government. Judge Scheindlin also denied a fourth motion by

Shoemaker for leave to amend on the ground that amendment would be futile.

Shoemaker now appeals, arguing that: (1) Judge Scheindlin should have granted him a default judgment; (2) he properly served all the defendants; (3) he was accorded insufficient discovery and was provided fraudulent documents by the government; and (4) it was error to dismiss his claim.

This court has inherent authority to dismiss an appeal as frivolous when the appeal presents no arguably meritorious issue for consideration. See Pillay v. INS, 45 F.3d 14, 17 (2d Cir. 1995)

(per curiam). This authority is not limited to appeals brought in forma pauperis. See id.

A case is frivolous when it presents "clearly baseless" factual contentions. Neitzke v. Williams, 490 U.S. 319, 327 (1989); see Denton v. Hernandez, 504 U.S. 25, 33 (1992) (case is frivolous when factual allegations "rise to the level of the irrational or wholly incredible"). This standard applies even when the plaintiff has paid the filing fee. See Pillay, 45 F.3d at 17.

Shoemaker's factual allegations are irrational and incredible. Indeed, the claims he asserts in his suit are not materially different from the allegations that he made in his previous lawsuit. This court found that suit "frivolous on its face." Shoemaker, No. 95-7964 at * 1. Nothing makes the allegations in this case more plausible.

We have considered all the arguments raised by Shoemaker and find them to be without merit.

Accordingly, the appeal is DISMISSED.

For the Court,
George Lange, III, Clerk
by *signed*